

Chapter 3: Jurisdictional Issues: The National Park Service's Role

Glacier Bay Proclaimed a National Monument

Salmon and other fish species were of little interest to the ecologists and other scientists who hoped to see Glacier Bay's glaciers and newly-exposed lands designated as a national monument. Under the leadership of William S. Cooper, the Ecological Society of America in early 1924 "applied" for the designation of Glacier Bay as a national monument, touting the area's scenic and scientific values. Given Cooper's and the Society's terrestrial focus of glaciers and forests, both modern and ancient, it is no surprise that they did not mention the marine environment.

George Parks, an agent of the DOI's General Land Office in Alaska, wrote a 26-page response to the application.^w He opposed the Ecological Society's proposal, but was comfortable with a much smaller monument in the northern reaches of Glacier Bay that was open to mining. Parks did not address fisheries resources in his response, but he did, however, express concern over how national monument status for Glacier Bay might affect cannery and fish trap sites as well as the fishing industry's need to cut timber for piling to be used in the construction of fish traps, docks, etc.¹⁴¹

On February 26, 1925, President Calvin Coolidge proclaimed Glacier Bay National Monument under the authority granted him by the 1906 Antiquities Act.¹⁴² Born of concerns over the looting of Indian artifacts on federal lands in the West, a provision of the 1906 Act authorized the president, at his discretion, to proclaim "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" as national monuments.¹⁴³ Theodore Roosevelt, who was president when the Antiquities Act became law, interpreted its provisions broadly: in 1908 he used it to proclaim some 5,000 square miles of the Grand Canyon as a national monument. In doing so he established a precedent that an object of scientific interest might be very large. The original Glacier Bay National Monument contained 1,820 square miles, not including marine waters.^x

In his proclamation, Coolidge cited the accessibility of "a number of tidewater glaciers of the first rank in a magnificent setting of lofty peaks" and a great variety of forests that "should be preserved in an absolutely natural condition." The proclamation went on to state that "This area presents a unique opportunity for the scientific study of glacial behavior and of resulting movements and developments of flora and fauna..." Marine resources were not specifically mentioned, though certainly "fauna" could include marine organisms. In Glacier Bay proper, the southern boundary of the new national monument ran approximately from Geike Inlet through Beartrack Cove. Bartlett Cove was about 15 miles south of this line, and thus the monument did not include most of the waters that had been utilized by commercial fishermen.

The Antiquities Act provided no specific guidance on how the monuments would be managed on a day-to-day basis, or which bureau would manage them. Coolidge's proclamation specified that NPS would manage the monument in accordance of its Organic Act of 1916, but for years afterward, Congress provided no funds for that purpose.

Seven months after Glacier Bay National Monument was proclaimed, *Pacific Fisherman* published a "Southeast Alaska Number" that focused on the fishing industry in Southeast Alaska. The region was praised as a "homeland for fishermen" and "one of the world's greatest fish producing areas." Quoting *Pacific Fisherman*:

In Southeast Alaska are now located approximately 120 separate fishery establishments, including salmon canneries, mild curing stations, shellfish plants, freezers, fresh fish houses, herring salteries and reduction works; and some 2,000 fishing craft of various types and sizes have their home ports in this section. It has for years held first place among salmon canning

^w Parks became the Territory of Alaska's governor in 1925.

^x The failure to include the calculation of acreage of marine waters in the original Glacier Bay proclamation and the 1939 proclamation that expanded the monument led some commercial fishing interests to later claim—without merit—that it was not the intent of the Presidents Coolidge or Roosevelt to include them in the monument.



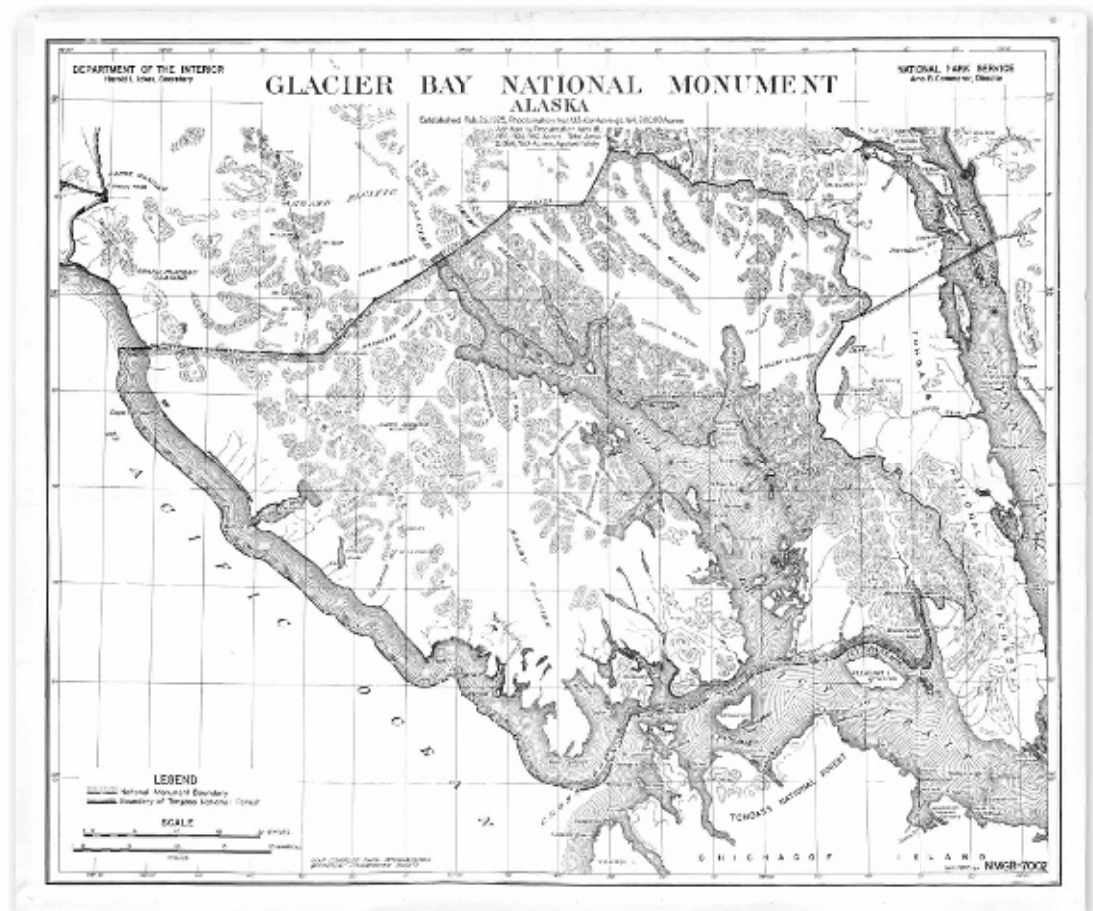


Figure 16: Map of 1939 Glacier Bay National Monument expansion. The map clearly includes the bay's waters. (courtesy Kenwood Youmans family)

districts of the world, normally producing more than half the entire pack of Alaska. Halibut fishing operations of the North Pacific are largely centered here, being served by numerous freezing and fresh-fish shipping stations. The district has also lately taken its place among the world's great herring producing areas, building up an important salting industry and a herring oil and meal business of vast proportions; and in various other fishery activities its position is one of importance.¹⁴⁴

There was little commercial fishing occurring in Glacier Bay when Glacier Bay National Monument was proclaimed, and it is not surprising that *Pacific Fisherman* made no mention of the proclamation. Likewise there was no mention with the Bureau of Fisheries 1925 report on commercial fisheries in Southeast Alaska and the governor of Alaska's 1925 official report to the Secretary of the Interior. The following year, however, Governor George Parks, who had been appointed Alaska's governor, noted the

proclamation in his report to the Secretary of the Interior, but limited his remarks to the monument's terrestrial attributes.¹⁴⁵

The 1939 Expansion of Glacier Bay National Monument

On April 18, 1939, President Franklin Roosevelt, using his authority under the Antiquities Act, expanded Glacier Bay N.M. to a total of 3,850 square miles (see Figure 16). Glacier Bay proper in its entirety was now within the monument. In the proclamation no mention was made of fish or fisheries or the marine environment. Roosevelt simply cited the public's interest in reserving the "glaciers and geologic features of scientific interest" on "public lands" within the expansion. As well, the expanded areas were "necessary for the proper care, management, and protection of the objects of scientific interest" situated within the original monument lands.¹⁴⁶ The definition of what an "object of scientific interest," to be sure, was in the eye of the beholder. Certainly an unexploited marine ecosystem would be of scientific interest to most marine biologists. Nevertheless, the language was vague and would later add to confusion over the intent in

establishing and expanding Glacier Bay N.M. As with the original Glacier Bay proclamation, the area added in the expansion was previously part of the Tongass National Forest.

Opposition to the 1939 expansion of Glacier Bay N.M. by Gustavus homesteaders was the first chapter in the often sour relationship between Gustavus and the NPS. The homesteaders were upset because the expansion relegated their dozen or so homesteads that made up all of the private land in the mostly agricultural community to essentially being islands within the monument. They feared potential restrictions on grazing, and were concerned that, with no additional homesteading, the community's potential for growth and development was limited.^Y A further concern was the inclusion of Bartlett Cove in the monument. Gustavus itself lacked a proper boat harbor, and the homesteaders had envisioned a future Gustavus linked by road to a harbor at Bartlett Cove. The inclusion of Bartlett Cove in the monument might preclude any development that did not serve the Park Service's needs.¹⁴⁷

The NPS did not restrict commercial fishing in Glacier Bay. Nevertheless, a propaganda booklet written in early 1949 by fishermen who favored local control of Alaska's fisheries—and who took considerable liberty with facts—characterized Glacier Bay as a “fishing reserve of the foulest kind.” The fishermen wrote that the designation of Glacier Bay as a national monument “forced the Indian residents of Strawberry Point [an early name for Gustavus] to leave their village for other fishing grounds.”¹⁴⁸ There were at that time no Native residents at Gustavus, and no one was displaced.

The residents of Gustavus received some satisfaction in 1955, when President Dwight Eisenhower signed a proclamation that returned the Gustavus area (approximately fifteen thousand acres) and some four thousand acres of marine waters to the Tongass National Forest. A number of factors figured into his decision. Among them were requests by the territory's delegate to Congress and governor, a letter writing campaign by Gustavus homesteader Charlie Parker, and the belief by the NPS that the development that had occurred in Gustavus during the war years had dimin-

ished its suitability for national monument status.¹⁴⁹ Though there would be no further homesteading until after statehood, the land use policies of the Forest Service were considerably less restrictive than those of the NPS. Bartlett Cove remained within the monument.

The National Park Service and Its Mandate at Glacier Bay^Z

Protecting a vast tract of public land for aesthetic, non-utilitarian purposes was a revolutionary concept when Congress established Yellowstone, the world's first national park, in 1872. Congress did so fewer than ten years after the close of the Civil War. The park was founded during an age of rampant exploitation of public lands, an age in which society put a premium on the utilitarian. But Yellowstone National Park, with its spectacular scenery, abundant wildlife, and remarkable thermal attractions, was to be treated differently. In Yellowstone, all timber, mineral deposits, natural curiosities, and “wonders” were to be protected from “injury or spoliation,” and preserved in their “natural condition.” The function of the park was simple: it was to serve as a “pleasuring-ground for the benefit and enjoyment of the people.”¹⁵⁰ The idea proved very successful. It served as a model for nations around the world and it was followed by the development of an extensive national park system in the United States. The park system, however, would become far more than a pleasuring ground. It would become a scientifically important system of protected natural refuges in a nation many now consider overwhelmed with development.

National parks are enormously popular. The general public equates them with vacations, with beautiful, often spectacular, scenery, and with clean air and water. It should come as no surprise that of all the agencies of the U.S. government, the National Park Service receives the highest public approval. A 1995 Harris Poll nationwide survey asked adult individuals how much they supported fourteen different government services. The survey found that the National Park Service was the most popular, supported by eighty-five percent of those polled.¹⁵¹ A cooperative study by the NPS and the University of Idaho, also done in 1995, concluded that visitors to national

^Y The NPS did not restrict grazing at Gustavus, but allowed no range improvements on monument lands.

^Z This discussion draws heavily from the work of Richard West Sellars, NPS historian at Santa Fe, NM. In 1997 Sellars authored *Preserving Nature in the National Parks*.

parks were “largely satisfied” with the quality of services they received. That year there were fully 273 million visitors to the national park system.¹⁵² Though visits to major western parks in the contiguous United States have significantly declined in recent years, the total number of visitors to the parks overall has remained roughly static.¹⁵³ The popularity of the parks has often afforded the National Park Service a degree of insulation from political manipulation, though this has been less so in Alaska.

Congress established the National Park Service in 1916 as an agency within the Department of the Interior and gave it responsibility to

promote and regulate the use of Federal areas known as national parks, monuments and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.¹⁵⁴

This legislation, known as the National Park Service Organic Act, remains to this day the chief point of reference for managing the country’s national parks and monuments. Most of the national parks at the time of the Park Service’s inception were “mountain” parks located in the West. Conservation of marine resources, such as those found in Glacier Bay, was not a consideration.

The key word in the Park Service’s Organic Act is “unimpaired.” Embodied in this single word is the only actual standard contained in the agency’s mandate. Unfortunately, Congress provided no exact definition of what it meant by the term. Without an exact definition, the National Park Service’s mandate is, in the words of agency historian Richard Sellars, “ambiguous and open to broad and often divergent interpretation.”¹⁵⁵ Some considered

“unimpaired” to be synonymous with the lands being retained in their “natural condition,” as was stipulated in the pioneering legislation that established Yellowstone N.P. The National Park Service’s own interpretation of the word’s meaning has evolved as environmental awareness has increased.

The Park Service’s founders interpreted the term “unimpaired” loosely.^{AA} They were focused on the parks as tourist destinations, and assumed, given nature’s resiliency, that roads and trails, and tourist and administrative facilities were unlikely to cause serious harm. Although comprehensive ecological preservation was still in the future, management of the parks in a “natural state” was their vision.

The “Lane Letter” on national park management, signed by Franklin Lane, President Woodrow Wilson’s Secretary of the Interior in 1918, represented the first formal statement of the Department of the Interior’s interpretation of its responsibilities under the Organic Act. Horace Albright, who was instrumental in shaping the Park Service’s ideals and who actually wrote the Lane Letter, later referred to it as the Service’s “basic creed.”¹⁵⁶ The letter was considered to be the Park Service’s official policy as late as the 1970s.¹⁵⁷

In his letter, Secretary Lane declared that the parks—our “national playground system”—were to be maintained in an “absolutely unimpaired” condition. Yet he also stated that consumptive uses, such as cattle grazing and timber cutting, could be permitted under certain conditions, and that fishing, which was aggressively promoted, would be one of the “favorite sports” in the parks.^{BB} Additionally, Lane declared that, except as “specially authorized by law,” there would be no commercial use of the parks other than that related to the accommodation and entertainment of visitors.¹⁵⁸

In March 1925, less than a month after Glacier Bay National Monument was proclaimed, Hubert Work, Secretary of the Interior under President Calvin Coolidge, signed what became known as the “Work Letter.” This policy statement basically reiterated—at times word for word—that of his predecessor, Franklin Lane. The word “unimpaired,” however, is not to be found in Secretary Work’s letter. Work interpreted the Park Service’s mandate

^{AA} For the first seventeen years of its existence—until 1933—the National Park Service was, in fact, run by two of its founders, Stephen Mather and Horace Albright.

^{BB} Though not enunciated in Lane’s letter, predators were killed in national parks as a matter of policy to protect animals favored by the public, such as deer and elk.

to be to “preserve the parks and monuments for posterity in essentially their natural state.” The Park Service’s natural resources management practice during Work’s tenure, as it had been under Lane’s and would be for decades to come, was focused on the preservation of scenery that was pleasing to the public.

In his letter, Secretary Work also noted that the federal government had exclusive jurisdiction over the parks and monuments in Alaska. That jurisdiction would keep management and enforcement matters relatively simple until Alaska was granted statehood in 1959. After that point the jurisdiction issue, particularly as it affected Glacier Bay’s fisheries, became clouded.

Louis Cramton, a Republican attorney from Michigan, served in Congress from 1913 until 1931. As a congressman, Cramton took great interest in the affairs of the national park system. In 1916, he was a member of the House Public Lands Committee, and thus a participant in the deliberations that created the National Park Service. He was later chairman of the subcommittee that controlled the Service’s budget. Shortly after leaving Congress, Cramton became a special assistant to Ray Wilbur, President Herbert Hoover’s Secretary of the Interior.

Secretary Wilbur may have harbored some uncertainty about the national parks, for in 1932 he asked Cramton to make a careful study to “determine what Congress, in initiating the park system, intended the national parks to be, and what policies it expected would govern the administration of the parks.” Preliminary results of Cramton’s study were presented in the 1932 National Park Service director’s report to the Secretary of the Interior. Germane to commercial fishing in Glacier Bay, Cramton determined that Congress in 1916 intended that:

- “The national parks are essentially non-commercial in character and no utilitarian activity should exist therein except as essential to the care and comfort of park visitors.”
- “There should be no capture of fish or game for purposes of merchandise or profit.”

But there were exceptions in which achieving the higher goal of preserving impor-

tant areas required flexibility and tolerance. Cramton explained:

National parks, established for the permanent preservation of areas and objects of national interest, are intended to exist forever. When, under the general circumstances such action is feasible, even though special conditions require the continuance of limited commercial activities or of limited encroachments for local or individual benefit, an area of national-park caliber should be accorded that status now, rather than to abandon it permanently to full commercial exploitation and probable destruction of its sources of national interest. Permanent objectives highly important may thus be accomplished and the compromises, undesired in principle but not greatly destructive in effect, may later be eliminated as occasion for the continuance passes.¹⁵⁹

Activities such as commercial fishing, according to Cramton’s reasoning, should not preclude an area becoming a national park, but should be tolerated only as long as necessary.

Language contained in the 1978 act that expanded Redwood National Park in California, was interpreted by the NPS as a reaffirmation of the Organic Act’s statement of purpose: National parks and other NPS units were to be protected, managed and administered “in light of the high public value and integrity of the National Park System,” and in a manner that prevents the “derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directed and specifically provided by Congress.”¹⁶⁰ This was also seen by the NPS as a directive to enhance, in particular, the protection of ecological values in the park system, and led to a revision of regulations in 1983 that prohibited certain natural resource consumptive activities in parks unless specifically authorized by Congress. Among them was commercial fishing.¹⁶¹

The Park Service’s interpretation of its mandate, as it pertained to commercial fishing in Glacier Bay, took an unexpected turn in

1990, when the preservationist-oriented environmental groups Alaska Wildlife Alliance and American Wildlands sued the NPS over its failure to prohibit commercial fishing in Glacier Bay's wilderness and non-wilderness waters (*AWA v. Jensen*). The Department of Justice attorney representing the NPS argued successfully that the Secretary of Interior did indeed have the statutory authority to permit commercial fishing in Glacier Bay N.P.'s non-wilderness waters. In deciding the case, the U.S. District Court ruled, and the Ninth Circuit Court of Appeals affirmed, that commercial fishing was prohibited in designated wilderness, but held that congress had not statutorily prohibited commercial fishing in the non-wilderness waters of the park.¹⁶² Further, the courts found that NPS had not established in regulation that commercial fishing derogates park values and purposes,^{CC}¹⁶³ but affirmed that Congress intended for the Secretary of the Interior to regulate commercial fishing in parks.¹⁶⁴

The Senate 1979 report that accompanied the Alaska National Interest Lands Conservation Act (1980) provided an idea of Congress's intent when it designated Glacier Bay National Monument as a national park. The report specifically identified Glacier Bay as a park that was intended to be a large sanctuary, "where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time without the changes extensive human activities would cause."¹⁶⁵ It was well understood at the time that commercial fishing was a major ongoing activity within the monument's marine waters, though one that had done no apparent long-term damage to the area. ANILCA itself had generated a huge controversy in Alaska, and few wanted to fan the flames of the controversy by suggesting that commercial fishing should immediately be terminated in Glacier Bay N.P. An effort to end commercial fishing would be made, but only when it became politically feasible to do so.

Each national park and national monument is unique. When proclaimed, Glacier Bay National Monument, like all national parks and monuments at their inception,

reflected the nation's existing social and economic values. Those values have evolved. And they continue to do so. The evolution has been toward the public's favoring of increasingly greater ecological preservation that would result in parks that are more "pure." This evolution was slow to begin and for many years halting, but it greatly accelerated after the dramatic increase in environmental awareness that coincided with the publication in 1962 of Rachel Carson's *Silent Spring*, the book that traced the deadly path of the pesticide DDT through the food chain. The NPS's management ethos evolved as well, but in the course of doing so the sometimes reluctant and always slow-to-change agency recurrently found itself in the position of playing catch-up with the public's desire.

The Park Service's initial efforts at preservation focused on terrestrial ecosystems, which had been the subject of scientific studies that began in the 1930s. Efforts to preserve marine ecosystems followed later, with broad concern over the state of Earth's oceans helping to draw focus on the situation at Glacier Bay.

In interpreting its mandate at Glacier Bay N.P. in 1997, the NPS, in a report that discussed commercial fishing, used the term "unimpaired" to comprehensively define its goal for marine resources. Unimpaired marine resources were those in which:

- "Habitats and natural population structure and distribution of species are preserved and perpetuated;
- Natural successional and evolutionary processes occur unimpeded
- Natural biological and genetic diversity is maintained."¹⁶⁶

More simply put, the goal of the NPS at Glacier Bay was to provide comprehensive ecological protection for the park's marine resources. They would be accorded the same protection as had become standard with the park's terrestrial resources. But only up to a point: the NPS was working to phase out commercial fishing in the park, but it would allow sport fishing to continue. Although the

^{CC} Ironically, in formulating its decision, the court pointed to the Park Service's own 1991 Glacier Bay proposed rule in which the agency stated that it might sanction at least some commercial fishing if it could be shown scientifically to "compatibly coexist with conserving park resources in an unimpaired state."

scale of consumptive use resulting from sport fishing is a fraction of that from commercial harvests, such a strategy was biologically inconsistent because a dead fish is a dead fish, whether caught on commercial or sport gear. Even so, however, the policy was realistic both politically and in practice, given the popularity of sport fishing in the national parks and the acknowledged fact that a phase-out of commercial fishing would take several decades.

In preserving the national park system's natural resources, the NPS views itself as striving to serve a "greater good." That goal, however, is sometimes hard to quantify and difficult to explain, particularly to those who have long been accustomed to having access to resources in the parks. At Glacier Bay, of course, that resource was fish. In its effort to terminate commercial fishing in Glacier Bay N.P. that began about 1990, the agency faced what was probably the supreme test of its ability to implement what it interpreted as its mandate in the face of intense local and political opposition.

Jurisdiction over Glacier Bay's Fisheries

Anthony Dimond, Alaska's non-voting delegate to Congress, worked very hard, though unsuccessfully, to give Alaska's territorial government control of the territory's fish and game resources. In 1937, Dimond was unsure whether commercial fishing was permitted in Glacier Bay N.M., and he inquired about the subject to the Secretary of the Interior.¹⁶⁷ He received the following response from Oscar Chapman, the acting secretary:

The Glacier Bay National Monument is under the administration of the National Park Service of this Department and it is the policy of that service to prescribe protection to all native animals within national parks and monuments. All areas supervised by that Service are wildlife sanctuaries in which hunting or capturing of animals is prohibited...

The exception is made to this general policy of wildlife protection in

that sport fishing is allowed in park areas. Thus, fish are the only form of wildlife designated for exploitation in national parks and monuments. In accordance with these regulations, fishing with nets, seines, and traps, or for merchandise or profit, or in any other way than with hook and line, is prohibited.^{DD 168}

Fishing "for merchandise or profit" may have been illegal in Glacier Bay N.M. under NPS regulations, but regarding Dungeness crab, Bureau of Fisheries (Department of Commerce) regulations permitted commercial fishing in the Icy Strait District, which included Glacier Bay.¹⁶⁹ Regarding halibut, Glacier Bay was in Area 2 as defined by the International Fisheries Commission, the inter-governmental agency that regulated the halibut fishery pursuant to the 1923 treaty with Canada.^{EE 170} According to that agency, Glacier Bay was open to commercial fishing for halibut.

In 1940, the Bureau of Fisheries (Department of Commerce) was merged with Bureau of Biological Survey (Department of Agriculture) to form the Fish and Wildlife Service (FWS), which was placed in the Department of the Interior. The reorganization facilitated the development of a coordinated program for the management of fisheries and other wildlife resources.¹⁷¹ It also improved communication and coordination between fisheries managers and the NPS.

In early 1941, Ward Bower was chief of the Division of Alaska Fisheries for the FWS. Bower began work in Alaska with the Bureau of Fisheries in 1911 and probably understood the Territory's fisheries as well as anyone. He suggested that all of Glacier Bay should be open to commercial trolling for salmon. The Department of the Interior during the war years worked very hard to increase the production of seafood. In accord with his suggestion, FWS regulations were amended in March 1941 to read: "All commercial fishing for salmon, except by trolling, is prohibited in Glacier Bay north of 58 degrees 27 minutes 54 seconds north latitude."¹⁷² The FWS then took the issue a step further with its sister DOI agency. Victor Cahalane, a biologist who was in charge of the

^{DD} The actual NPS regulation, as published in the *Federal Register* on June 27, 1936 read: "Fishing with nets, seines, traps or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in hand, is prohibited."

^{EE} To better reflect its mandate to study and preserve Pacific halibut, the International Fisheries Commission was later renamed the International Pacific Halibut Commission.

FWS's section on national park wildlife, sent a letter to NPS Associate Director Demaray in which he recommended that the rules and regulations of the NPS be amended to permit commercial trolling for salmon in the waters of Glacier Bay.¹⁷³ NPS Director Newton Drury responded that his agency concurred with Bower's recommendations (the FWS regulations were actually already in effect), and asked that, given the new fishery, the FWS increase its patrols of Glacier Bay's waters.¹⁷⁴

In accord with those of the FWS, the NPS quickly modified its regulations to specifically allow commercial fishing in Glacier Bay N.M. not just for salmon, but for all commercial species:

36 C.F.R. (1941 Supplement)

§ 2.4(b) Fishing with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand, is prohibited; except that commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations.^{FF}

A second regulatory change permitted the use of bait:

§ 2.4(g) The possession of live or dead minnows, chubs, or other bait fish, or the use thereof as bait, is prohibited in all parks and monuments, except Acadia National Park, Fort Jefferson National Monument, and the areas of Glacier Bay National Monument in which commercial fishing is permitted in accordance with regulations approved by the Secretary on February 28, 1941.

Although the NPS regulatory changes were prompted by a change in the FWS commercial salmon fishing regulations, they also sanctioned the halibut and Dungeness crab fisheries that were ongoing in Glacier Bay N.M.

The regulations for commercial salmon fishing in Glacier Bay promulgated by the FWS in 1941 remained unchanged until 1966. Similarly, the NPS regulations that provided

for commercial fishing in Glacier Bay N.M. remained unchanged until 1967.

During World War II, the NPS had neither the resources nor personnel to patrol Glacier Bay N.M. In 1941, when Frank Been again toured Glacier Bay, he did so aboard the FWS vessel *Brandt*. The cruise was specially arranged by a very accommodating FWS to assist the NPS in its work at Glacier Bay. The vessel's master, James Crawford, was one of several recently appointed deputy NPS rangers. Though the FWS patrolled Glacier Bay only about twice each year, it was considerably better than the NPS had been able to manage. The deputization of FWS personnel was a way for the NPS to establish at least a small presence in Glacier Bay N.M. The arrangement was reciprocal: NPS rangers at Sitka (and perhaps elsewhere) were appointed deputy FWS agents. Been doubted the value of deputization, but thought public knowledge of it "may have a moral or retarding affect on possible violations."¹⁷⁵

Fishery Policy, More Jurisdiction Issues

To be sure, the United States in 1942 was focused on winning a war the likes of which it had never experienced and the outcome of which was very uncertain. Food—even a luxury item such as crab—was a strategic commodity, and all, particularly government agencies, were expected to facilitate its production. Secretary of the Interior Harold Ickes made this absolutely clear.

In 1939, prior to U.S. involvement in World War II, Ickes addressed the need to increase the production of food. With conservation in mind, his goal for Alaska's fisheries was to "increase production to the highest possible level consistent with perpetuation of the supply."¹⁷⁶ Though he did not single out Glacier Bay, Secretary Ickes, acting as "coordinator of fisheries," in 1942 sounded a more urgent note: "... the fishing industry must exert every effort to increase current and future production. There is now a vital need for every possible pound of fresh, frozen, canned and otherwise preserved fishery product."^{GG}
¹⁷⁷ Little of that product would come from Glacier Bay. The war years, and those immediately following, saw little commercial fishing in Glacier Bay.

^{FF} Fort Jefferson N.M. was renamed Dry Tortugas N.P. in 1992.

^{GG} Of Alaska's salmon resource, Ickes wrote in 1942 that he did "not know where more protein food suitable for use anywhere in the world can be obtained for the same expenditure of manpower and material."

Salmon Trap at Point Gustavus

There had been a fish trap at Point Gustavus since before Glacier Bay was proclaimed a national monument, but it was mostly ignored by the NPS after the monument was expanded in 1939. In 1950, Ranger Duane Jacobs expressed his opinion of the trap: “The most objectionable feature in regard to commercial fishing as I see it, is the fish trap (salmon) operated offshore from Point Gustavus by the Pacific American Fisheries [canning operations at Excursion Inlet].”¹⁷⁸ The trap was licensed by the Fish and Wildlife Service, the Territory of Alaska, and, because it was an impediment to navigation, the U.S. Army Corps of Engineers.¹⁷⁹ Some in the NPS thought the Service should issue a special use permit for the trap “in order that the ground used in these operations are in complete control of the Park Service for the various reasons.”¹⁸⁰ Apparently there was also at least one salmon trap in Katmai N.M. that operated under an NPS special use permit. The annual fee at Katmai was \$50.¹⁸¹ For reasons unclear, some at Glacier Bay N.M. thought a \$100 annual fee was more appropriate for the Point Gustavus trap, but Herbert Maier, acting regional director argued that

Our feeling in this connection is that in Alaska, where sentiment against Government regulation is strong, the imposition of the \$100 fee may not only be inconsistent with our schedule elsewhere but may cause irritation and animosity that may be harmful to the National Park Service objectives all out of proportion to the added revenue that would result.¹⁸²

In 1952, a special use permit was issued to Excursion Inlet Packing Co. (formerly Pacific American Fisheries) for its salmon trap located at Point Gustavus. The annual fee was \$100.¹⁸³ The permit was renewed at least through 1954.¹⁸⁴ Federal regulations outlawed fish traps in 1959.

Objectionable or not, the NPS at Glacier Bay had for the first time officially licensed a commercial fishing operation. In doing so the agency had formally exercised its management authority over a marine area of the monument, a factor that would come into play many years later, when the State of Alaska claimed jurisdiction over the marine waters of Glacier Bay.

Inquiry by Crab Processing Interests Fosters Serious Discussion

The Service at that time was also being asked to commit to the continuation of commercial fishing for Dungeness crab in Glacier Bay. On June 25, 1950, Ben Miller, superintendent of Sitka N.M. with responsibility over Glacier Bay, received the following inquiry from the Icy Straits Salmon Co. in Hoonah:

The Icy Straits Salmon Company is seriously considering the packing of crabs at their plant at Hoonah, beginning this fall. If the enterprise proves successful, we intend to include that operation, full scale, along with the canning of salmon.

We find that a large quantity of crabs, previously furnished to Parks Canning Company, and the Woods Cannery, came from the Glacier Bay and Dundas Bay areas. There seems to be some discussions as to whether the taking of crabs would be allowed, after this fall, in those two areas...

Your early advice will be greatly appreciated, for the determining of the available fishing grounds will have a decided bearing upon the plans we are to make.¹⁸⁵

The exchange among top NPS and FWS officials over the following months was likely the first comprehensive discussion of how difficult an issue commercial fishing in Glacier Bay N.M. was. No matter how great the desire of the NPS officials to administer Glacier Bay as they thought befit a national monument, political realities in Alaska made them hesitant to do so.

Though current NPS regulations specifically allowed commercial fishing in Glacier Bay N.M., Miller responded that he was not in a position to answer their question, and said he would forward the request to the NPS regional office in San Francisco.¹⁸⁶ With the forward, however, Miller sent his personal, preservation-oriented recommendation, which started the discussion:

It is my recommendation that all types of commercial fishing, including crabs, be barred from Glacier Bay National Monument. I realize that

this is a very delicate situation and will undoubtedly (sic) bring considerable adverse criticism to the Service, however, I feel it is in keeping with National Park Service policy to bar commercial enterprises from the areas. I feel that the protection of sea life under the water comes under the same category as the protection of wildlife on the land surface.¹⁸⁷

Sidney McClellan, NPS attorney at the regional office, infused some reality into Miller's recommendation:

As you are probably aware, some of the waters at Glacier Bay are already open to commercial fishing, and Al Kuehl [a NPS landscape architect who specialized in Alaska issues] feels that there will be strong protest if we prohibit the taking of crabs from waters that are open to commercial fishing—but, of course, we wish to go as far as we can to prohibit further commercial operations.¹⁸⁸

Lowell Sumner, an NPS biologist who later became a leader in the environmental community, was also involved in the discussion. Sumner added:

Of course we feel that the trend is against such commercial activity and should be. But we agree with Kuehl that we might not be able to cope with the protests.

Therefore we suggest allowing crab taking, but only in a designated part of the Monument. Some day, perhaps in 10 or 15 years, it should be eliminated altogether...

Without a map I can't suggest an exact boundary line but feel no crab taking should be permitted north of a certain line in the main bay. Perhaps a line from Bartlett Cove west to corresponding cove on the opposite side... Should protect crabs in Sandy Cove...

This situation is more political than biological in its complications. Kuehl, who knows the local situation, can judge how far we can go with restrictions at this time, when

the Hoonah native question is slumbering but likely to flare up, and statehood is another unstable factor. I think we need a public relations man up there for a considerable period before we can make many restrictive changes.¹⁸⁹

The NPS at Sitka and Glacier Bay did not contemplate any hasty action. The Service would "assemble and weigh all the facts carefully, and try to determine what effects closure of certain waters would have on the fishing economy of the neighboring areas." Ranger Duane Jacobs, who occasionally patrolled Glacier Bay, wrote that the Service "should proceed very carefully in the curtailment of fishing rights in monument waters, and yet stand firm against any new rights they may request, particularly if they involve a type of construction or building."¹⁹⁰

The FWS was also involved in the discussion. C. Howard Baltzo, assistant regional director, said the Glacier Bay commercial fishing issue had given his agency "considerable food for thought," and believed it might "reach into a higher policy." To discuss the issue further, a November meeting in California between the NPS and the FWS was suggested.¹⁹¹ The meeting on the "respective authorities of the Fish and Wildlife Service and the National Park Service to regulate fishing within Glacier Bay National Monument" was held on November 13, 1950.

Several days after the meeting, Herbert Maier, NPS assistant regional director, sent a letter to the Icy Straits Salmon Co.:

A discussion of commercial fishing was held between representatives of the Park Service and representatives of the Fish and Wildlife Service in this office on November 13. The question of crab fishing within Glacier Bay National Monument was discussed, and no change was recommended regarding the crab fishing situation within the monument.

Accordingly, you are advised that the present plan is to permit the taking of crabs at Glacier Bay during the coming season.¹⁹²

Donald Chaney, chief counsel for the FWS, later summarized his agency's position

on the issue, including a key acknowledgment of the NPS's jurisdiction:

It is quite clear that the Alaska fishery laws and regulations issued pursuant thereto are applicable throughout the Territory, even though certain areas also may be subject to regulation by some other agency. At the same time, it is clear that the National Park Service also may adopt regulations further restricting fishing within Glacier Bay National Monument.

Chaney added that the Secretary [of the Interior] should not be requested to permit fishing by means of one set of regulations and to restrict fishing at least in given areas by means of another set of regulations. Therefore, it is suggested that the requirements of the National Park Service for closed seasons or closed areas, or similar restrictions, very well may be recognized in the Alaska commercial fishery regulations...¹⁹³

Arthur Demaray, director of the NPS, agreed with Chaney, and thought the matter could and should be worked out through cooperation between the agencies.¹⁹⁴ C. E. Persons, an acting assistant regional director, agreed that any new regulations pertaining to commercial fishing in Glacier Bay should be agreed to jointly by the NPS and FWS.¹⁹⁵

Though no such regulations were ever negotiated, the NPS in late 1951 felt it had the support of the FWS: as NPS Ranger Duane Jacobs noted, "I have looked upon the Fish and Wildlife Service as a good and powerful friend to have on our side, and feel sure they would modify commercial fishing zones in the monument when and if they conflict with monument purposes, thereby relieving this Service of that burden, which we are not equipped to handle."^{HH} ¹⁹⁶ In early 1952, however, the NPS acknowledged the FWS's fundamental jurisdiction in Glacier Bay, and its belief that it would be "difficult or impossible to persuade the FWS to abandon its jurisdiction over Glacier Bay,"

and that it would be "equally difficult or impossible to abolish commercial fishing therein."¹⁹⁷

The issue of commercial fishing in Glacier Bay had been considered at the top level of the NPS, but the perceived lack of complete jurisdiction over the fisheries resources of Glacier Bay, coupled with a lack of resources for management and enforcement activities, and an understanding that the elimination of commercial fishing from Glacier Bay would be politically difficult or impossible, led the agency to accept the status quo. More than a quarter century would pass before the Service would again seriously question commercial fishing in Glacier Bay.

To be sure, there were other issues at hand, chief among them the need for the NPS to accommodate the dramatic postwar increase in visitation to the national parks. In 1956, the NPS initiated Mission 66, a 10-year effort focused on the need to accommodate anticipated national park system visitors in 1966, the Service's golden anniversary.¹⁹⁸ The principal goal of Mission 66 at Glacier Bay N.M. was to construct a visitor center, dock facilities, and administrative infrastructure at Bartlett Cove. Leone J. Mitchell was appointed superintendent of Glacier Bay N.M. in 1958, and most of his energy was focused on the development at Bartlett Cove.

^{HH} Regarding enforcement of NPS regulations at Glacier Bay in 1952, Ben Miller, Superintendent of Sitka National Historical Park and Glacier Bay National Monument, wrote that because of the "lack of funds and adequate equipment," the lone ranger assigned to protect Glacier Bay's "vast expanse of land and water" was "about as effective as one man trying to subdue a large forest fire with a shovel and a bucket of water."